

REMARKS

Claims 8-12 were examined.

In the Office Action mailed April 10, 2008 (the "Office Action"), the Examiner rejected claims 8-12 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter. The Examiner further rejected claims 8-19 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Publication No. 2001/0049619 to Powell et al. (the "Powell reference") in view of the WebVan references. Claims 11-12 were rejected under 35 U.S.C. 103(a) as being unpatentable over the Powell reference in view of the WebVan references and further in view of Nanry et al., Solving the Pickup and Delivery Problem with Time Windows Using Reactive Tabu Search Transportation Research, Part B, Vol. 34, 2000 (the "Nanry reference").

With respect to the Examiner's rejection of claims 8-12 under 35 U.S.C. 112, claim 8 has been amended to overcome the rejection, and consequently, the rejection of the claims under 35 U.S.C. 112, second paragraph, should be withdrawn.

As previously mentioned, claims 8-10 have been rejected under 35 U.S.C. 103(a) as being unpatentable over the Powell references in view of the WebVan references.

Claims 8-19 are patentable over the Powell reference in view of the WebVan references because the combined teachings fail to teach or suggest the combination of limitations recited by the claims.

For example, claim 8 recites a computer readable medium having instructions stored thereon for causing a computer to perform a method for assigning an order to a schedule having an opening identified by iterating through a list of shifts potentially having sufficient time to accommodate the order and through a list of virtual free time blocks for each shift in the list of shifts, a virtual free time block representing an amount of time in which an order may be assigned by bumping assigned orders in a shift. The method includes where a customer has specified both an appointment window and an opening for the order, generating a list of schedulable time blocks for a shift identified in the opening, the schedulable time blocks having at least one of a free time block and a virtual free time block and defining a range of time having openings to which the order can be assigned, the openings resulting from analysis of orders already assigned in the shifts, intersecting the opening and the appointment window to obtain a time range defined by the overlap of the opening and the appointment window, assigning the

order to the opening if a schedulable time block from the list of schedulable time blocks includes the opening and the opening is within the time range. The method further includes where a customer has specified an appointment window and not specified an opening for the order, checking a list of openings for overlap with the appointment window, generating a list of schedulable time blocks if there is no overlap, each of the schedulable time blocks in a list having at least one of a free time block and a virtual free time block and defining a range of time having openings to which the order can be assigned, and assigning the order to the schedule if there is an opening in the list of openings that overlaps with the appointment window or an opening in the list of schedulable time blocks that overlaps with the appointment window.

The combined teachings of the Powell reference and the WebVan references fail to teach or suggest at least generating a list of schedulable time blocks for a shift identified in the opening, the schedulable time blocks having at least one of a free time block and a virtual free time block and defining a range of time having openings to which the order can be assigned, the openings resulting from analysis of orders already assigned in the shifts.

The Powell reference describes a scheduling system that relies on statistically estimated daily schedules of service requests to facilitate scheduling of service requests from customers. The statistically estimated schedules are based on historical data. As described in the Powell reference, the accuracy of the estimated daily schedules depends on the validity of the data within the database. In scheduling customer service requests, the actual service requests are compared to the statistically estimated service requests populating the estimated schedules. The comparisons result in correlations scores being calculated. The correlation scores reflect the similarity between the actual service request and respective estimated service requests. When the estimated service request having the highest correlation score is identified, that is, the estimated service request most similar to the actual service request, that estimated service request is replaced in the schedule with the actual service request.

Having statistically estimated schedules populated with estimated service requests avoids the need to analyze the schedules already having currently assigned orders in order to find openings in which a customer order can be potentially assigned. As a result, the computational workload in scheduling an actual service request is less than an analysis of existing schedules having actual orders already assigned. As described in the Powell reference, the scheduling process "will take no more than several seconds, allowing the process to be performed while the

customer waits.” See paragraph 55. The Powell reference does not describe performing any analysis of schedules where currently assigned orders are moved, removed, or added to find potential openings for requested orders. The reasons for not having any such description is because the scheduling system described in the Powell reference assigns actual service requests to corresponding estimated service requests that populate the estimated schedules, rather than finding openings based on actual orders already assigned in the shifts. In the Powell reference, the analysis is merely a matter of comparing and replacing statistically estimated service requests with customers’ actual service requests.

The WebVan references have been cited by the Examiner as teaching the limitations related to assigning orders where a customer has specified an appointment window and not an opening for an order. See the Office Action at pages 8-10. Even if it is assumed for the sake of argument the Examiner’s characterization of the WebVan references is accurate, the WebVan references fail to make up for the deficiencies of the Powell reference previously discussed.

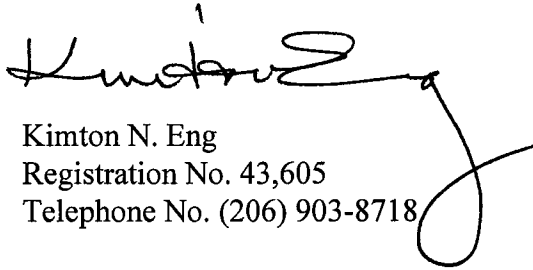
For the foregoing reasons, claim 8 is patentable over the Powell reference in view of the WebVan references. Claim 9 and 10, which depend from claim 8, are similarly patentable based on their dependency from allowable base claim 8. Therefore, the rejection of claims 8-10 under 35 U.S.C. 103(a) should be withdrawn.

As previously mentioned, claims 11 and 12 have been rejected under 35 U.S.C. 103(a) as being unpatentable over the Powell reference in view of the WebVan references, and further in view of the Nanry reference.

The Examiner has cited the Nanry reference for teaching well known techniques for defragmenting a set of time blocks in a shift. See the Office Action at page 13. Even if the Examiner’s characterization of the Nanry reference is considered accurate for the sake of argument, it fails to make up for the deficiencies of the Powell and WebVan references as previously discussed. Therefore, the rejection of claims 11 and 12 under 35 U.S.C. 103(a) should be withdrawn.

All claims are in condition for allowance. Favorable consideration and a timely Notice of Allowance are earnestly solicited.

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